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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD DOWDELL

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0712-CR-1014

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John Alt, Commissioner
Cause No. 49G14-0706-FD-98638

June 10,2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Donald Dowdell appeals his convictions for Possession of Cocaine,¹ a class D felony, and Possession of Marijuana,² a class A misdemeanor. On appeal, he challenges the sufficiency of the evidence regarding constructive possession.

We affirm.

On May 31, 2007, a search warrant was executed on Dowdell's one-bedroom apartment. When members of the SWAT team entered the apartment, they found Dowdell and four other individuals in the living room. Dowdell informed the officers that the apartment was his. After securing the scene, officers entered the bedroom and found cocaine in plain view on the nightstand next to Dowdell's bed. Officer also recovered drug paraphernalia and a clear plastic bag containing sixteen grams of marijuana from the top of the dresser in the bedroom.

Dowdell was charged with possession of cocaine, a class D felony, and possession of marijuana, a class A misdemeanor. At the bench trial, the only issue before the court was whether Dowdell constructively possessed the drugs found in his bedroom. He was convicted as charged.

On appeal, Dowdell challenges the sufficiency of the evidence regarding constructive possession. While he acknowledges the apartment and bedroom were his, he argues that the other individuals present had access to his bedroom. Moreover, he directs us to his testimony at trial where he denied that the drugs were his or that he even knew the drugs were in his residence.

¹ Ind. Code Ann. § 35-48-4-6 (West, PREMISE through 2007 1st Regular Sess.).

² I.C. § 35-48-4-11 (West 2004).

When reviewing the sufficiency of the evidence, we will not reweigh the evidence or judge the credibility of witnesses. *Alkhalidi v. State*, 753 N.E.2d 625 (Ind. 2001). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). Moreover, we will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625.

A conviction for possession of contraband may rest upon proof of either actual or constructive possession. *See Britt v. State*, 810 N.E.2d 1077 (Ind. Ct. App. 2004). “Actual possession occurs when the defendant has direct physical control over the item, while constructive possession involves the intent and capability to maintain control over the item even though actual physical control is absent.” *Id.* at 1082. Here, we are presented with the issue of constructive possession.

To demonstrate that the defendant was capable of maintaining dominion and control, the State must demonstrate that the defendant was able to reduce the controlled substance to his personal possession. *Grim v. State*, 797 N.E.2d 825 (Ind. Ct. App. 2003). Proof of a possessory interest in the premises in which contraband is found is adequate to show the capability to maintain dominion and control over the items in question. *Massey v. State*, 816 N.E.2d 979 (Ind. Ct. App. 2004). As set forth above, there is no dispute that the apartment and bedroom were Dowdell’s. Therefore, it is clear that he had the capability to maintain dominion and control over the drugs found in his bedroom.

To establish the intent element, the State must demonstrate the defendant's knowledge of the presence of the contraband, which may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. *Id.* These additional circumstances have been found to include, among other things: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant. *Id.*; *Ladd v. State*, 710 N.E.2d 188 (Ind. Ct. App. 1999). In each of these instances, "there exists the probability that the presence and character of the contraband was noticed by the defendant." *Ladd v. State*, 710 N.E.2d at 190.

While Dowdell had visitors present in his apartment in the hours leading up to the search, the evidence reveals the premises and, in particular, the bedroom belonged to Dowdell. Moreover, when the SWAT team entered the apartment, everyone was found in the living room. During the subsequent search of Dowdell's bedroom, cocaine and marijuana were found in plain view on the nightstand by his bed and on his dresser. Under these circumstances, a reasonable trier of fact could infer that Dowdell had knowledge of and intended to maintain dominion and control over the cocaine and marijuana.

As set forth above, Dowdell directs us to his own testimony at trial in which he denied knowledge of the drugs and indicated others had ample opportunity to enter his

bedroom and leave the drugs. Dowdell, therefore, claims he presented sufficient evidence to rebut the inference he had knowledge of the drugs. We reject Dowdell's invitation to reweigh the evidence and judge his credibility. The State presented sufficient evidence of constructive possession to support his convictions.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.